In the High Court of Uttaranchal, at Nainital.

Special Appeal No. 20/2006

1- Cantonment Board, Nainital through its
Executive Officer.
2- The Executive Officer, Cantonment Board,
Nainital …Appellants.

Versus

Smt. Hema Kandpal W/o R.C. Kandpal,
R/o Cantt. Quarter No. 5, Cantt. Area
Tallital, Nainital …Respondent.

Sri Pradeep Lohani, learned counsel for the appellants.
Sri Manoj Tiwari, learned counsel for the respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 24-04-2006

By way of this Special Appeal, the impugned judgment and order dated 22-3-2006, passed by the learned Single Judge in W.P. No. 1140 (S/S) of 2005 Smt. Hema Kandpal Versus Cantonment Board & another, has been put to challenge.

2- Brief facts of the case are that the respondent was appointed as Assistant teacher on 2.4.1990 in Primary School, Cantonment, Nainital, which is being run by the Cantonment Board. After the retirement of Km. Uma Sah, the respondent became entitled for promotion as Head Mistress on 1.4.2003, but her claim was not considered while she had been continuously discharging her duties as Head Mistress w.e.f. 1.4.2003 till 31.8.2004. The respondent was ultimately promoted on the post of Head Mistress on 1-9-2004 but she claimed that since she has discharged the duties of Head Mistress for a period of one and half years, she is entitled to get the salary of Head Mistress and other consequential benefits.

3- The respondent therefore filed a writ petition before this court seeking the relief to issue a writ in the nature of mandamus

commanding the appellants to pay salary and other allowances for the post of Head Mistress w.e.f. 1.4.2003 along with all consequential benefits.

4- The counter affidavit was filed by the appellants in the aforesaid writ petition and it was admitted that the respondent was appointed as Assistant Teacher in the Primary School, Cantonment Board, Nainital. It was also admitted that the post of Head Mistress became vacant after the retirement of Km. Uma Shah on 31.3.2003 but the same could not be filled up without prior approval of Director of Defence Estate. It was further admitted in the counter affidavit that the respondent was promoted to the post of Head Mistress on 1-9-2004 and all outstanding dues to the respondent have been paid.

5- Learned Single Judge after having perused the entire material on record and hearing the learned counsel for the parties, allowed the writ petition and issued the writ in the nature of mandamus directing the appellants to pay salary and allowances to the respondent Hema Kandpal for the post of Head Mistress w.e.f. 1.3.2003 to 31.8.2004 by way of the impugned judgment and order dated 22.3.2006.

6- Feeling aggrieved by the aforesaid impugned judgment and order the present Special Appeal has been filed by the Cantonment Board and another.

7- Heard the learned counsel for the parties and perused the record.

8- It is not disputed by the appellants in their counter affidavit filed before the learned Single Judge in the writ petition that the respondent worked on the post of Head Mistress w.e.f. 1.3.2003 to 31.8.2004 in an officiating capacity by the order of competent authority. Annexure-1 to the writ petition reveals that in the order dated 24.3.2003 it has been mentioned that Km. Uma Shah Head Mistress was retired on 31-3-2003 and Hema Kandpal was directed to take over all papers and materials relating to the School from retiring Head Mistress. Therefore, although there is no specific mention in the aforesaid order that Hema Kandpal would work on the post of Head Mistress as substantive or

temporary capacity but as she was directed to take all the papers and materials relating to the School, is indicative of this fact that she worked as Head Mistress in officiating capacity from 1.3.2003 to 31-8-2004. the respondent was entitled for being promoted on the post of Head Mistress after the retirement of Km. Uma Shah on 31.3.2003 as she fulfils all the required qualifications for that post but due to the time consumed in the official procedure she could be promoted on the post of Head Mistress only on 1-9-2004. Therefore, the learned Single Judge has rightly observed that the respondent is entitled to get salary and allowances for the post of Head Mistress from 1.3.2003 to 31-8-2004 in view of the law laid down by the Apex Court in the case of **Jaswant Singh Vs. Punjab Poultry Field Staff Association** reported in **(2003) 1 S.C.C. 261.** The Hon'ble Supreme Court in the aforesaid case has observed as under:-

> *"The High Courts decision in Gobind Singh case did not direct the promotion of Gobind Singh. What was directed was the payment of salary and allowances of the post of Chick Sexer since Gobind Singh had been discharging the duties of that post. Therefore, while the appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.*
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> *We accordingly allow the appeal in part. While upholding the order of the High Court, setting aside the order of the appellant's promotion, we direct the respondent Authorities to pay the appellant for the period he rendered service as a Chick Sexer at the scales of pay together with all allowances to which Chick Sexers were entitled at the relevant time."*

9- Therefore, in view of the aforesaid observation made by the Apex Court, the respondent is entitled to get salary and other allowances on the post of Head Mistress for the period she worked on that post in an officiating capacity prior to her actual

promotion. The learned Single Judge has rightly allowed the writ petition and issued the writ of mandamus by directing the appellants to pay salary and allowances to the respondent for the post of Head Mistress from 1.4.2003 to 31.8.2004, i.e., for the period she worked on that post in an officiating capacity prior to her actual promotion.

10- We do not find any infirmity in the impugned judgment and order dated 22-3-2006 passed by the learned Single Judge.

11- The Special Appeal lacks merit and is liable to be dismissed.

12- Accordingly the Special Appeal is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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